

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

June 19, 2006

CALL TO PODIUM:

Caroline Seiden
Planner

RESPONSIBLE STAFF:

Caroline Seiden
Planner
Fred Felton
Assistant City Manager

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Joint Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
X	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	06/01/2005
	06/08/2005
Hearing Date	06/20/2005
Record Held Open	06/14/2006
Policy Discussion	06/19/2006

TITLE: Z-301 and SDP-05-003

The Applicant is Requesting a Change from the I-3 (Industrial Office Park) Zone to the Mixed Use Development (MXD) Zone on Approximately 40.10 Acres of Land known as Casey East (Parcels 360, 563 And N455). The Subject Property is located Northwest of the Intersection of Maryland Route 355 (North Frederick Avenue) and Watkins Mills Road. In conjunction with the Change in Zone, SDP-05-003 Proposes a Mix of Uses, including 382 Residential Units, and Office, Restaurant, Retail, Hotel, Service Station, and Public Uses

SUPPORTING BACKGROUND:

In May 2005, Gary Unterberg of Rodgers Consulting, Inc., representing the applicant, Pete Henry, BP Realty Investments, submitted an application, Z-301, requesting a change from the I-3 (Industrial Office Park) Zone to the Mixed Use Development (MXD) Zone. Concurrently, an application for a schematic development plan proposal, SDP-05-003, for a mixed use complex was submitted. Uses include residential units, office, restaurant, retail, hotel, service station, and public uses on approximately 40.10 acres of land.

The Mayor and City Council and Planning Commission held a consolidated joint public hearing for the applications June 20, 2005. Three additional meetings were held regarding the applications, a joint work session on January 9, 2006, a discussion item at the March 20, 2006 Mayor and City Council meeting and another joint work session on April 26, 2006.

At their June 7, 2006 regular meeting, the Planning Commission made a recommendation for approval for both Z-301 and SDP-05-003. The Planning Commission also noted that after reviewing an alternative proposal for 31 town homes in place of a 140-unit age-restricted residential building it "heartily endorsed" the SDP as presented with the 140-unit building intact. A staff analysis and CPCs from the Planning Commission recommending their approval of both Z-301 and SDP-05-001 are attached, along with exhibits received since the April 24, 2006 joint work session.

Attachments:

Draft Ordinance and Resolution

CPC to Mayor and City Council from Planning Commission, Z-301

CPC to Mayor and City Council from Planning Commission, SDP-05-003

Staff Analysis

Z-301 Index of Memoranda and Exhibits identified in **bold**.

SDP-05-003 Index of Memoranda and Exhibits identified in **bold**

DESIRED OUTCOME:

Mayor and City Council's record on both Z-301 and SDP-05-003 closed as of June 14, 2006. A draft ordinance to adopt Z-301 and a draft resolution to adopt SDP-05-003 as recommended by the Planning Commission are available if the Mayor and City Council choose to take final action.

ORDINANCE No. _____

AN ORDINANCE TO REZONE 40.10 ACRES OF LAND,
CURRENTLY KNOWN AS PARCELS 360, 563 AND N455,
LOCATED EAST OF INTERSTATE 270 AND NORTHWEST OF THE
MARYLAND ROUTE 355/WATKINS MILL ROAD INTERSECTION
IN THE CITY OF GAITHERSBURG, MARYLAND,
FROM THE EXISTING I-3 (INDUSTRIAL OFFICE PARK) ZONE,
TO THE MXD (MIXED USE DEVELOPMENT) ZONE,
IN ACCORDANCE WITH §24-196 (MAP AMENDMENTS)
AND §24-10A (FLOATING ZONES) OF THE CITY CODE

Z-301

BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, that they find the following facts from the evidence of record in Zoning Map Amendment Application Z-301:

A. The application Z-301, filed by Gary Unterberg, of Rodgers Consulting, Inc. requests rezoning of Parcels 360, 563 and N455 from the I-3 (Industrial Office Park) Zone to the MXD (Mixed Use Development) Zone. The subject lots consist of 18.91 acres, 20.78 acres, and .43 acres, respectively.

B. The Sketch Plan submitted as part of Z-301, proposes a mix of uses, including 382 residential units and 230,800 square feet of commercial, office, restaurant, service station, senior and public uses.

C. The Project is proposed to be developed in two phases, as follows:

Phase 1: Commencement at Approval of the Final Site Plan

- 112,100 Square feet mixed use (retail, restaurant, commercial) – Buildings B, D, E, F, G, H, L, M, and S
- 29,200 Square feet County Police Station – Building P
- 10,000 Square Feet City Senior Center – Building Q
- 140 Condominium units over retail with parking deck (age restricted) – Building C
- 85 Condominium units over retail with parking deck – Building A

Phase 2: Commencement of Watkins Mill Road Interchange

- 8,900 Square feet mixed use (bank/service) – Buildings O and N
- 10,300 Square feet mixed use (retail/restaurant) – Buildings I and J
- 60,000 Square feet office – Building K
- 157 Condominium units with parking deck – Building R

D. The Mayor and City Council and the Planning Commission conducted a joint public hearing on June 20, 2005. In conjunction with this application and public hearing, the Mayor and City Council and the Planning Commission also reviewed schematic development plan application, SDP-05-003. At the public hearing, in addition to the testimony of the applicant and his project team, testimony was received from Daniel Reeder, 11520 Game Preserve Road, who testified in favor of the rezoning. Based on Mayor and City Council and Planning Commission guidance, the plan was revised to include a greater mix of uses. These revisions were reviewed during a joint work session on January 9, 2006. During the course of this work session, the Mayor and City Council and Planning Commission raised a number of concerns about the revised plan, including access to the 6th District Police Station, insufficient green space, overall residential density, incompatible housing types, lack of meaningful affordable housing component, too few restaurants, the inclusion of a hotel, and traffic impacts, particularly at the intersection of North Frederick Avenue (MD 355) and Montgomery Village Avenue (MD 124). Two additional meetings were held regarding this application, a discussion item at the March 20, 2006 regularly scheduled meeting of the Mayor and City Council, and another work session on April 24, 2006, during which time the applicant was given further guidance regarding the planned development.

E. The Planning Commission's record closed on May 10, 2006. The Commission made its recommendation on June 7, 2006, and forwarded their recommendation of approval to the Mayor and City Council for Z-301. The Mayor and City Council closed their record on June 14, 2006.

F. During their policy discussion meeting on June 19, 2006, the City Council carefully reviewed the evidence of record, including 89 exhibits, and considered all submitted testimony, documents and correspondence presented, including the Planning Commission's recommendation for approval, and made the following findings with respect to Application Z-301.

1. A rezoning to a floating zone can be made without reference to change or mistake. The City of Gaithersburg Zoning Ordinance, Section 24-10A establishes the MXD zone as a floating zone, and states that approval and placement of floating zones may only occur upon a finding by the City Council that the application therefore:

- a. Complies with the purposes and intent of the zone as stated in the zoning ordinance; and

- b. As applied will be compatible and harmonious with existing and planned land uses in the surrounding area.

2. The application complies with the purposes and intent of the MXD zone as stated in the zoning ordinance and as applied will be compatible and harmonious with existing and planned land uses in the surrounding area in the following manner:

- a. The change from the I-3 Euclidian zone to the City's MXD floating zone will provide the Staff, Planning Commission, Mayor and City Council and the Applicant the ability to craft a higher quality, mixed-use product.
- b. The development application processed under the MXD zone provides the City with tools to address important master planning issues, both existing and currently under discussion, such as traffic mitigation requirements and affordable housing, which are not available under the I-3 Euclidian Zone.
- c. The development application processed under the MXD zone provides the City an opportunity to review and approve development for this property. Under I-3 zone, a much less rigorous review process would be in place.
- d. The development application processed under the MXD zone provides the City with both greater controls and more flexibility (including mixing of uses and setbacks) to produce a better-finished product than would be available under the I-3 Euclidian Zone.
- e. The superior environment of a properly designed mixed use project can be seen in the many mixed-use communities developed in the City using the MXD zone, as opposed to the more isolated and sterile environment of a business park provided under the I-3 zone. The proposed development integrates residential, commercial and public uses in a manner that could not be accomplished under the I-3 zone.
- f. The site is surrounded by properties developed under a variety of zones, including the MXD zone, and the use of the MXD zone will best permit the development of a plan that maximizes both the external and internal compatibility. Through the review and approval of design guidelines, required as part of this application, a superior quality of development is ensured.
- g. The development application processed under the MXD zone allows for a mix of residential, retail offices, and institutional uses located in a manner convenient to each other on a pedestrian level, will provide better linkages, and will provide the opportunity for more open space to be preserved.
- h. The development application processed under the MXD zone will provide the opportunity for more open space to be preserved. Under the MXD zone, building heights beyond what would be permitted under the I-3 zone have made it possible to preserve the stream valley buffer, additional active and passive open space, and to provide all reforestation requirements on-site.

i. As noted earlier, the development application processed under the MXD zone provides the City with phasing tools not available under the I-3 Euclidian Zone. Phasing of this application will be coordinated with the development of the Watkins Mill Road interchange.

j. The Property is also compatible with and complementary to the existing and proposed development of the area. The site has office and industrial uses to the west, power lines to the north, office uses to the south, and a mix of a shopping center, attached housing and an auto dealer to the east across Route 355.

G. Based upon the evidence of record, the City Council further finds, in accordance with § 24-160D.10.(a), the following:

1. The application meets or accomplishes the purposes, objectives, and minimum standards of the zone, as stated in § F.2.a. through § F.2.i. above. In addition, the application meets the ten (10) acre minimum area requirement of the MXD Zone by containing 40.1 acres and the zoning ordinance locational requirements being adjacent to Md. Route 355 and Watkins Mill Road extended, which is proposed as part of the application. The access is adequate based upon accepted sketch plan traffic studies. Public water and sewer service presently serves adjacent development and is available to this site. No inadequacy or other concerns with respect to the provision of these facilities has been identified in the record.

2. The application is in accord with recommendations in the applicable master plan for the area and is consistent with any special conditions or requirements contained in said master plan. The Property is located within *Special Study Area 6, Frederick Avenue North*, of the 2003 Land Use Element of the City of Gaithersburg Master Plan. This special study area has not yet been completed. Zoning for the property remains unchanged from the 1997 Master Plan, at which time it was part of *Neighborhood Six, Study Area 3, Map Designation 6*. The 1997 Master Plan adopted a "commercial/industrial-research-office" land use designation, while retaining the I-3 (Industrial Office Park) zone already in place. The Property is also located within the Northern Employment District of the *Frederick Avenue Corridor Land Use Master Plan*, a portion of which was adopted as a Special Study Area to the Master Plan for the City of Gaithersburg in 2001. The Corridor Master Plan identified the property as a "future mixed-use development parcel. Uses should include commercial, residential and retail." Buildings are intended to be placed along the edges of the site with parking located behind the buildings. Recommendations in the Corridor Plan for development within 600 feet of Frederick Avenue, including design, building placement, additional landscaping, screening and buffering along Route 355, pedestrian orientation, open space, and proposed uses (residential and retail) have been incorporated into the proposed Casey East development.

3. The application and sketch plan will be internally and externally compatible and harmonious with existing and planned land uses in the MXD zoned areas and adjacent areas. The site has a full range of uses existing and proposed in the surrounding area including office and industrial uses to the west, power lines to the north, office uses to the south, and a mix of a shopping center, attached housing and an auto dealer to the east across Md. Route 355. The proposed development will provide commercial and residential opportunities for these surrounding uses.

For the reasons stated above, application Z-301 is granted with the following conditions:

1. The project shall be phased as follows:

Phase 1 commences at approval of the final site plan and shall permit the following:

Buildings and associated infrastructure: Building S (Office/ Bank); Building A (office and residential condos above deck), Building B (restaurant), Building C (residential condo, required to be age restricted, with retail above deck including associated clubhouse, pool and tennis court), Building D (restaurant), Building E (retail), Building F (retail), Building G (retail), Building H (restaurant), Building L (restaurant), Building M (retail), Building P (Police facility and associated future parking deck), Building Q (city senior center), parking decks under future Building K and all other parking and related facilities for the above, as required. Provided that the number of available parking spaces provided never falls below the required number of parking spaces, parking may be initially constructed as surface parking to City standards and then replaced with buildings and structured decks as shown on the SDP.

Phase 2 commences at beginning of construction of the Watkins Mill Road Interchange and shall permit the following:

Buildings: I (restaurant), J (retail), K (Office above deck); N (service station), and O (bank), and R (residential condos above deck) and parking and related infrastructure for the above, as required. Provided that the number of available parking spaces provided never falls below the required number of parking spaces, parking may be initially constructed as surface parking to City standards and then

replaced with buildings and structured decks as shown on the SDP.

The property included in the Second Phase is intended to be fully developed and not held as open space (except as shown on the submitted SDP), and such development density noted above is intended to commence construction concurrent with the commencement of construction of the Watkins Mill Interchange. If the Watkins Mill Interchange project has not commenced on or before March 1, 2015, or is abandoned by the Maryland State Highway Administration (SHA), the Developer may apply to the City for an amendment to the Sketch Plan.

2. Memorandum of Understanding (MOU) between the City of Gaithersburg, Montgomery County and the applicant must be executed prior to submission of final site plan. This MOU must provide for the complete build out of Watkins Mill Road Extended from MD 355 to the proposed interchange on the east side of I-270, and complete build out of Watkins Mill Road from MD 117 to the proposed interchange on the west side of I-270;
3. Prior to submission of the final site plan, the applicant shall enter into an Agreement of Dedication requiring the Applicant to dedicate that portion of the Property as shown on the SDP for (i) the Watkins Mill Interchange, (ii) the 6-9 lanes for Watkins Mill Road Extended, (iii) the Montgomery County 6th District Police Station, and (iv) the City of Gaithersburg's Senior Center. Applicant shall then, upon request by the appropriate entity, dedicate at no cost that portion of the property for construction of (i) the Watkins Mill Interchange to the State of Maryland or its affiliate, (ii) the 6-9 lanes for Watkins Mill Road Extended to the State of Maryland (or its affiliate), Montgomery County or the City of Gaithersburg, as they ultimately agree, (iii) the Montgomery County 6th District Police Station to Montgomery County, and (iv) the Senior Center to the City of Gaithersburg;
4. The applicant will be obligated to construct as part of the approved development two lanes of Watkins Mill Road Extended;

5. The applicant shall place all environmentally sensitive areas, as identified on the schematic development plan, under a permanent conservation easement to be recorded on a plat. The applicant and its successors and assigns shall own and be responsible for maintaining all areas within the conservation easement and shall be entitled to reimbursement from the other owners and tenants within the project under terms of the leases and other agreements;
6. The applicant shall, as part of the Agreement of Dedication, provide the following for each residential building under the City's Affordable Workforce Housing Program as part of the proposed residential component within the development: 6.25 percent MPDU's, 6.25 percent Workforce Housing, and 5 percent Workforce Housing for income-qualified City employees, public safety workers or teachers. The applicant has agreed that the work force housing units must be priced to be affordable to families and households earning 80 percent of the Washington Area Median Income, and the MPDU units must be priced to be affordable to families or household earning 60 percent of the Washington Area Median Income.
7. Applicant is to work with City and Montgomery County Transportation staff to develop, fund up to \$500,000 and implement a Transportation Demand Management Plan to mitigate the effects of the proposed development on surrounding intersections. As an alternative, the applicant, the City Manager, and Montgomery County could reach an agreement whereby the Montgomery County Department of Transportation would administer and manage the TDM Plan. The applicant must escrow \$500,000 or an equivalent bond or letter of credit with the City to fund the TDM Plan prior to applying for final site plan approval. Applicant is to provide a preliminary plan at final site plan. A Transportation Demand Management Plan shall be operational at the time that the first certificate of occupancy is issued; and
8. Applicant is to record a Declaration of Restrictions, Covenants and Easements prior to the issuance of any site development permits.

ADOPTED by the City Council this 19th day of June, 2006.

Sidney A. Katz, Mayor and President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 19th day of June, 2006. APPROVED by the Mayor of the City of Gaithersburg, this 19th day of June, 2006.

Sidney A. Katz, Mayor

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, on the 19th day of June, 2006, and that the same was approved by the Mayor of the City of Gaithersburg on the 19th day of June, 2006. This Ordinance will become effective on the 10th day of July, 2006.

David B. Humpton, City Manager

RESOLUTION No. _____

RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF GAITHERSBURG GRANTING APPROVAL OF
SCHEMATIC DEVELOPMENT PLAN SDP-05-003,
KNOWN AS CASEY EAST, FOR
APPROXIMATELY 40.10 ACRES OF PROPERTY
ZONED MIXED USE DEVELOPMENT (MXD)

SDP-05-003

OPINION

Application SDP-05-003 has come before the Mayor and City Council for approval of a schematic development plan (SDP) for land zoned Mixed Use Development (MXD). The City Council's authority in this matter is pursuant to § 24-160D.9(b)(3) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), which authorizes the Council and Commission to conduct public hearings on a schematic development plan application following appropriate notification procedures and to take action on the application within ninety (90) days of the close of the hearing record, following receipt of a recommendation by the City Planning Commission.

The subject case involves approximately 40.10 acres of land and concerns the development of the property known as Parcels 360, 563 and N455. The subject property ("Property") is located east of Interstate 270 and west of Maryland Route 355, and is bounded on the west by Md. Route 355, to the north by P 370 & P 182 (Potomac Electric Power Co), and to the east by parcel N391 (Colonial Pipeline Co), Parcels N526 and N417 (Humane Society of the United States), and Interstate 270. The Property is currently bounded on the south by parcel N860 (Monument Realty), but will be bounded on the south by the future Watkins Mill Road extended. The schematic development plan application was submitted to the City Planning and Code Administration, on May 19, 2005. This application was designated as SDP-05-003.

OPERATIVE FACTS

A. Background

The subject Tax Parcels, originally a portion of tax parcel 910 were annexed into the City of Gaithersburg in 1968. In 1955 the construction of what is now Interstate 270 split the parcel, originally P910 into two, with I-270 running between them. Parcel P910 east of I-270 was renamed P563 and P360 in 2004 and is currently held by BP Realty Investments, LLC.

N455 (formerly Outlot 1B) is a sliver tract that at one time acted as a service road utilized to provide access to a field on what is the property of the Humane Society of the

United States (HSUS) office building. This service road fell into disuse several years ago with the construction of Professional Drive and the Humane Society of the United States (HSUS) facility.

In 2002 a portion of the property was the subject of rezoning application Z-294, which requested a rezoning of 23.4 acres from I-3 to C-2 zoning, using the optional method of development. The rezoning request was for the commercial portion of an overall proposed commercial mixed-use development. A request to withdraw the rezoning application, Z-294, was submitted with the new application and a Resolution of Withdrawal (R-4-06) was adopted by the Mayor and Council on January 17, 2006. The proposed project also included several Research & Development office buildings which received concept plan approval (CSP-02-001) from the Planning Commission in July 2002. Concept Plan CSP-02-001 never proceeded past the concept plan stage of development.

B. Current Application:

In May 2005, Gary Unterberg of Rodgers Consulting, Inc., representing the applicant Peter Henry, BP Realty Investments, LLC submitted an application for schematic development plan, SDP-05-003, for a mixed use complex. Concurrently, an application for rezoning the entire 40.10 acres from I-3 (Industrial Office Park) Zone to the MXD (Mixed Use Development) Zone was submitted.

The Mayor and City Council and Planning Commission held a consolidated joint public hearing for map amendment application Z-301 and SDP-05-003 on June 20, 2005. Based on Mayor and City Council and Planning Commission guidance, the plan was revised to include a greater mix of uses. These revisions were reviewed during a joint work session on January 9, 2006. During the course of this work session, the Mayor and City Council and Planning Commission raised a number of concerns about the revised plan, including access to the proposed Sixth District Police Station, insufficient green space, overall residential density, incompatible housing types, lack of a meaningful affordable housing component, too few restaurants, the inclusion of a hotel, and traffic impacts, particularly at the intersection of North Frederick Avenue (MD 355) and Montgomery Village Avenue (MD 124). Two additional meetings were held regarding these applications, a discussion item at the March 20, 2006 regularly scheduled meeting of the Mayor and City Council, and a second work session on April 24, 2006, during which time the applicant was given further guidance regarding the planned development.

The Planning Commission record closed on the Schematic Development Plan SDP-05-002 as of May 10, 2006. The Planning Commission reviewed the SDP-05-003 proposal of 382 residential units, 121,200 square feet of commercial uses, including restaurant and retail, 70,100 square feet of office and dedication of land for 39,200 square feet of public uses, including a Sixth District Montgomery County Police Station and a 10,000 square foot Senior Center on 40.10 acres of land at their June 7, 2006 meeting. Based on their review of the evidence, the Planning Commission found that the SDP-05-003 application is in conformance with the MXD Zone standards. The Planning Commission further recommended approval of SDP-05-003 finding it consistent with the land use recommendations of the 1997 Master Plan and the Frederick Avenue Corridor Plan and

also finding it an important element in achieving some of the City's transportation and housing goals. Consequently, the Planning Commission recommended approval of the SDP-05-003 application with the following conditions required of the applicant:

1. The project shall be phased as follows:
Phase 1 commences at approval of the final site plan and shall permit the following:

Buildings and associated infrastructure: Building S (Office/ Bank); Building A (office and residential condos above deck), Building B (restaurant), Building C (residential condo, required to be age restricted, with retail above deck including associated clubhouse, pool and tennis court), Building D (restaurant), Building E (retail), Building F (retail), Building G (retail), Building H (restaurant), Building L (restaurant), Building M (retail), Building P (Police facility and associated future parking deck), Building Q (city senior center), parking decks under future Building K and all other parking and related facilities for the above, as required. Provided that the number of available parking spaces provided never falls below the required number of parking spaces, parking may be initially constructed as surface parking to City standards and then replaced with buildings and structured decks as shown on the SDP.

Phase 2 commences at beginning of construction of the Watkins Mill Road Interchange and shall permit the following:

Buildings: I (restaurant), J (retail), K (Office above deck); N (service station), and O (bank), and R (residential condos above deck) and parking and related infrastructure for the above, as required. Provided that the number of available parking spaces provided never falls below the required number of parking spaces, parking may be initially constructed as surface parking to City standards and then replaced with buildings and structured decks as shown on the SDP.

The property included in the Second Phase is intended to be fully developed and not held as open space (except as shown on the submitted SDP), and such development density noted above is intended to commence construction concurrent with the commencement of construction of the Watkins Mill Interchange. If the Watkins Mill Interchange project has not commenced on

or before March 1, 2015, or is abandoned by the Maryland State Highway Administration (SHA), the Developer may apply to the City for an amendment to the Sketch Plan.

2. Final Memorandum of Understanding (MOU) between the City of Gaithersburg, Montgomery County and the applicant regarding the construction of Watkins Mill Road extended is to be executed prior to the approval of final site plan;
3. As part of the SDP approval, the applicant shall enter into an Agreement of Dedication requiring the Applicant to place into reservation for dedication that portion of the Property as shown on the SDP for (i) the Watkins Mill Interchange, (ii) the 6-9 lanes for Watkins Mill Road Extended, (iii) the Montgomery County 6th District Police Station, and (iv) the City of Gaithersburg's Senior Center. Applicant shall then, upon request by the appropriate entity, dedicate at no cost that portion of the property for construction of (i) the Watkins Mill Interchange to the State of Maryland or its affiliate, (ii) the 6-9 lanes for Watkins Mill Road Extended to the State of Maryland (or its affiliate), Montgomery County or the City of Gaithersburg, as they ultimately agree, (iii) the Montgomery County 6th District Police Station to Montgomery County, and (iv) the Senior Center to the City of Gaithersburg;
4. The applicant will be obligated to construct as part of the approved development two lanes of Watkins Mill Road Extended. Applicant shall also continue to work in good faith with Montgomery County and the City of Gaithersburg to construct such 6-thru-lane road under the terms of the proposed MOU;
5. The applicant shall place all environmentally sensitive areas, as identified on the schematic development plan, under a permanent conservation easement to be recorded on a plat. The applicant and its successors and assigns shall own and be responsible for maintaining all areas within the conservation easement and shall be entitled to reimbursement from the other owners and tenants within the project under terms of the leases and other agreements;

6. The applicant shall, as part of the Agreement of Dedication, provide the following as part of the proposed residential component within the development: 6.25 percent MPDU's, 6.25 percent Workforce Housing, and 5 percent Workforce Housing for income-qualified City employees, public safety workers or teachers for each residential building under the City's Affordable Workforce Housing Program;
7. Applicant is to work with staff to develop, fund up to \$500,000 and implement a Transportation Demand Management Plan to mitigate the effects of the proposed development on surrounding intersections. Applicant is to provide a preliminary plan at final site plan. A Transportation Demand Management Plan shall be operational at the time that the first certificate of occupancy is issued; and
8. Applicant is to record the Declaration of Restrictions, Covenants and Easements prior to the issuance of any site development permits;
9. Applicant shall be required to construct the tennis court, pool and clubhouse generally shown on the SDP concurrently with the construction of Building C condominium;
10. Applicant shall continue to work with staff to eliminate and/or minimize the use of the several remaining retaining walls proposed throughout the site during the final site plan process;
11. Applicant shall work with City Staff on the continued refinement of pedestrian and bicycle linkages between buildings and throughout and around the site. A final pedestrian/bicycle plan shall be reviewed as part of the final site plan;
12. Applicant shall work with City staff on location of paths adjacent to and traversing sensitive areas, including a sign program for such path, bike racks, etc., extending to and from the site and through the site during the final site plan stage;
13. The applicant shall receive final approval letters from appropriate utility agencies including, but not limited to, Washington Gas, PEPCO, Verizon, and WSSC prior to the issuance of Public Works permits for each phase;

14. The final utility plan shall be approved by DPWPM&E prior to the issuance of Public Works permits for each phase;
15. Applicant shall obtain letter of agreement from SHA for access from Md. Rte. 355 and for any grading/disturbance of the revertible slope easement along Md. Rte. 355 prior to approval of final site plan;
16. Applicant must submit a preliminary/final stormwater management plan as part of the final site plan application;
17. Applicant must obtain approval of the preliminary Forest Conservation Plan prior to the submission of final site plan;
18. Applicant to work with staff on design guidelines, including a comprehensive sign package, to be adopted by the Planning Commission prior to final site plan approval;
19. Applicant must obtain approval of the environmental waiver and mitigation plan for any intrusion into the stream valley buffer, as recommended by Staff, from the Mayor and City Council during the final site plan stage;
20. Applicant must obtain road code waivers, as recommended by Staff, from the Mayor and City Council during the final site plan stage;
21. Applicant shall submit a noise analysis for current and future traffic noise impacts on the site and a noise abatement plan as part of the final site plan application. Noise abatement measures should seek to achieve the 65 dBA exterior noise guideline and the 45 dBA interior noise guideline. Prior to approval of building permits, there shall be a certification by a professional engineer with competency in acoustical analysis that the building shells will attenuate exterior noise levels to an interior level not to exceed 45 dBA Ldn. A final noise mitigation plan shall be reviewed and approved by staff prior to the issuance of building permits;
22. The developer, working with the City and a developer retained LEED certified professional shall obtain LEED certification for Building K (office) within twelve (12) months of initial occupancy. The developer shall also

incorporate architecturally acceptable and commercially reasonable LEED elements, such as healthy buildings, into the design of Building C (age-restricted condominium over retail and parking deck) and encourage sustainable design;

23. Applicant to ensure that the design of all multi-story buildings with ground floor retail accommodate mechanical vent shafts through all floors for the first floor units;
24. Preliminary road profiles and grades to be submitted as part of the final site plan application;
25. Applicant to work with staff to locate new bus shelters near the Travis Avenue and Watkins Mill Road entrances to the development. The bus shelters shall be the City prototype without advertising;
26. Applicant to provide Art in Public Places Program (AIPP) and commit funding to be approved by city staff and AIPP committee during final site plan stage;
27. Applicant to redesign the Watkins Mill Road/Restaurant Row and Spectrum Avenue/N. Frederick Avenue intersections to better accommodate the primary turning movements into the development and to enhance the vistas at the intersections.
28. Amenities for Buildings A and R to be defined at final site plan; and
29. Applicant to provide screening and buffering of service roads adjoining Watkins Mill Road and North Frederick Avenue, in accordance with the Frederick Avenue Corridor Plan.

C. Evaluation and Findings

The City Council agrees with the findings, conclusions and recommendations of approval of Schematic Development Plan SDP-05-003 by the City Planning Commission and City staff. The City Council finds those recommendations to be well reasoned and adopts and incorporates their findings as part of this action. The City Council further agrees with the Planning Commission in that the procedures governing the application for the MXD Zone and approvals necessary to seek building permits are subject to a multi-step process and that this is only one of several steps of the process, that subsequently includes Final Site Plan reviews and approvals.

In reviewing the subject application for the approval of Schematic Development Plan SDP-05-003, the City Council finds the application and development proposal meets or accomplishes the purposes, objectives, and minimum standards and requirements of the MXD Zone that are set forth in Chapter 24 Article III, Division 19 of the City Zoning Ordinance.

The City Council finds that the application meets the submission requirements and the standards and requirements for approval of the subject schematic development plan in that:

- 1) the applicant filed, together with the prescribed application fee, an application for approval of a schematic development plan which is consistent with the approved sketch plan in terms of nature, density, location of use, access, circulation, and preservation features;
- 2) the schematic development plan is scaled at one inch equals fifty (50) feet and contains: a) boundary survey; b) the uses of all buildings and structures within the schematic development plan area, as well as existing uses of adjacent property external to the MXD zoned area and proposed uses within adjoining MXD zoned areas; c) the location, height, approximate dimensions and conceptual elevations of all buildings and structures, and the setbacks and densities and/or square footage thereof; d) the location of points of access to the site and all public and private roads, pedestrian and bike paths; e) the location and setbacks of parking areas; f) existing topography, including, contour intervals of not more than two (2) feet; an approved forest stand delineation and forest conservation plan; one-hundred-year floodplains; other natural features; utility easements; g) all landscaped areas, proposed conceptual screen planting, open spaces, plazas, malls, courts, community identification signage, recreation and amenity areas; h) proposed phasing or staging plan of development and information relating to such plan's consistency with the provision of public facilities; i) demonstration of general compliance with any Master Plan recommendations for the property, including any special conditions or requirements related to the property set forth in the Master Plan; and j) a proposed covenant or other form of agreement indicating how the area will be included in any homeowners association or other organization, and how any open space, community space or amenities located within the area subject to review will be perpetually maintained;
- 3) the schematic development plan is in substantial compliance with the approved sketch plan (Z-301);
- 4) the schematic development plan contains a minimum of two hundred (200) dwelling units and one hundred thousand (100,000) square feet of proposed retail/office development, or a comparable equivalent mix;
- 5) the City Council and City Planning Commission have conducted a joint public hearing(s) on the application subject to the notification procedures in section 24-196 of this Code.

- 6) the Planning Commission delivered its recommendation to the City Council on June 8, 2006, within thirty (30) days of the close of the commission's hearing record of May 10, 2006.
- 7) the Council is taking action on the application within ninety (90) days after the close of the Council's hearing record on June 14, 2006;
- 8) the approval of this schematic development plan with its degree of detail shall substitute for preliminary site plan approval; and
- 9) the schematic development plan demonstrates compliance with Master Plan recommendations for the property, including any special conditions or requirements related to the property set forth in the master plan for among other reasons, the nature, and density, and mix of uses posed, future accessibility to public transportation improvements, retention of forested areas, and interrelationship and compatibility of uses.

The City Council finds from the evidence of record that the application for schematic development plan approval as currently amended fulfills the purposes and objectives of the MXD Zoning of this property and will in this regard implement the City Master Plan recommendations for a multi-use development on this site, properly staged to mitigate impacts on public facilities in an orderly fashion. The opportunity for affordable, market rate and age-restricted housing ensures a wide variety of housing opportunities on the site. Commercial retail components are integrated into both high density residential and office components, in a superior pedestrian environment, demonstrating an internal compatibility and the opportunity for shopping and employment in close proximity to residential use. The schematic development plan provides recreational amenities such as a stream valley park, programmed urban open space and roof deck recreational areas. The schematic development plan will provide a superior natural environment by the preservation of a 5.86 acre stream valley and buffer and additional forested area outside the buffer. The schematic development plan also provides significant public amenities including land for a Sixth District Police Station, a City Senior Center, and development of Watkins Mill Road from North Frederick Avenue to the proposed I-270 interchange. The plan is externally compatible with the surrounding properties. The subject plan encourages the efficient use of land by integrating various types of land use in close proximity to one another with opportunity for improved pedestrian circulation between various types of land uses and community amenities. Also the plan reflects convenient pedestrian access and will preserve forested areas, open space and provide recreation facilities. Finally the development is phased to allow for a more gradual impact on public facilities and the ability to bring on-line added road facilities during the life span of this plan.

The City Council finds the subject application development proposal to be in accordance with the themes and land use recommendations of the 2003 Master Plan Land Use Element. Further, the schematic development plan is consistent with relevant special conditions and requirements contained in said Master Plan and the Frederick Avenue Corridor Plan, the principles established for development in the Master Plan Themes, and approved sketch plan Z-301. The mix of residential uses will provide a range

of housing opportunities, along with employment, retail, recreational and community opportunities integrated into the project, all in close proximity to each land use and in direct proximity to an extensive road network which conforms with the Frederick Avenue Corridor Land Use Master Plan's vision of for the property.

The Schematic Development Plan meets the ten (10) acre minimum area requirement of the MXD Zone by containing 40.1 acres and the zoning ordinance locational requirements being adjacent to Md. Route 355 and Watkins Mill Road extended, which is proposed as part of the SDP application. The access is adequate based upon accepted sketch plan traffic studies more fully explained below. Traffic circulation will be adequately accommodated without directing traffic through any established, adjacent residential communities to cause any adverse impact on surrounding areas. Interior site traffic circulation will provide adequate vehicular access to all parts of the proposed development without creating points of congestion. An extensive pedestrian circulation system will connect various components of this development. Public water and sewer service presently serves adjacent development and is available to this site. No inadequacy or other concerns with respect to the provision of these facilities has been identified in the record.

The City Council finds that the Schematic Development Plan will be internally and externally compatible and harmonious with the existing land uses and planned land uses in the MXD zoned areas and adjacent areas. The site has office and industrial uses to the west, power lines to the north, office uses to the south, and a mix of a shopping center, attached housing and an auto dealer to the east across North Frederick Avenue (Md. Route 355). The Sketch Plan and SDP address many of the Frederick Avenue Corridor Master Plan design requirements in a balanced and appropriate fashion, and incorporate enlarged building setbacks, additional landscaping, screening and buffering along Md. Route 355 to soften the edge, among other items.

The City Council further finds that the level of development reflected by the Schematic Development Plan can be accommodated adequately by existing and planned public facilities with the proper phasing and staging of the development. When the Mayor and City Council approved Sketch Plan Z-301 on June 19, 2006, the following phasing schedule was approved:

Phase 1: Commencement at Approval of the Final Site Plan

- 112,100 Square feet mixed use (retail, restaurant, commercial) – Buildings B, D, E, F, G, H, L, M, and S
- 29,200 Square feet County Police Station – Building P
- 10,000 Square Feet City Senior Center – Building Q
- 140 Condominium units over retail with parking deck (age restricted) – Building C
- 85 Condominium units over retail with parking deck – Building A

Phase 2: Commencement of Watkins Mill Road Interchange

- 8,900 Square feet mixed use (bank/service) – Buildings O and N
- 10,300 Square feet mixed use (retail/restaurant) – Buildings I and J
- 60,000 Square feet office – Building K
- 157 Condominium units with parking deck – Building R

There is no evidence to indicate that public water, sewer, and transportation facilities could not adequately handle the needs of this development, with the temporary exception of the intersection of North Frederick Avenue (Md. Route 355) and Montgomery Village Avenue.

The City Council concurs with the summary of findings and recommendations of the applicant's traffic study submitted as part of Z-301 by The Traffic Group, Inc. The City Council finds this study to be thorough and acceptable and no contrary evidence exists in the record to contradict its conclusions. Intersection Capacity Analyses were conducted to determine the existing and projected LOS for each of the following study area intersections: Md. Route 355 (North Frederick Avenue)/Game Preserve Road, Route 355/Travis Avenue, Md. Route 355/Watkins Mill Road, Md. Route 355/Christopher Avenue, and Md. Route 355/Route 124 (Montgomery Village Avenue). The results, recommendations and conclusions of the traffic study analysis have been provided. These results indicate that both phases of this development are projected to operate at satisfactory LOS during the peak periods, with the exception of the intersection of Md. Route 355 and Route 124 during the morning and evening peak period. That intersection has been improved to the maximum width, and relief for the intersection is to be provided through the construction of the proposed Watkins Mill Interchange at I-270 at a later date. The completion of the Watkins Mill Road Interchange is projected by SHA to alleviate this morning and evening peak hour rush, and return all intersections to a level of service that is significantly improved from the existing conditions. The Watkins Mill Road Interchange will not be initiated until the portion of Watkins Mill Road that this application seeks to build is completed. Therefore, the City Council finds that the temporary failure of this intersection is necessary in order that the City achieve its long-range goal of obtaining a new interchange at Watkins Mill Road. In addition, the applicant will be required to work with City staff to develop, fund, up to \$500,000, and implement a Transportation Demand Management Plan to mitigate the affects of the development on the surrounding intersections.

The City Council finds that the applicant will be dedicating land for transportation and community facilities that will provide significant regional benefits. Additionally, the Council finds that the applicant will be constructing significant transportation enhancements including six lanes of Watkins Mill Road from N. Frederick Avenue to the proposed I-270 interchange.

The City Council concurs with the finding of Montgomery County Public Schools (MCPS) staff that the current Montgomery County Annual Growth Policy schools test finds school capacity adequate in the Watkins Mill cluster (where Casey East is located). The schools that currently serve the proposed development are Watkins Mill Elementary

School, Montgomery Village Middle School and Watkins Mill High School. Information obtained from Montgomery County Public Schools (MCPS) indicates that enrollment projections show that upon final build out, the development will generate approximately 12 elementary school students, 6 middle school students, and 7 high school students. The low estimates are due to the fact that 140 units are age restricted.

In conclusion, the City Council finds SDP-05-003, as amended containing 382 residential units (140 age-restricted), 116,400 square feet of commercial uses, including restaurant and retail, 70,100 square feet of office and dedication of land for 39,200 square feet of public uses, including a 6th District Montgomery County Police Station and a 10,000 square foot Senior Center on 40.10 acres of land to be in accordance with §§ 24-160D.9.(b) and 160D.10.(b) and as hereafter conditioned, is in the public interest and should be approved due to the presence of substantial evidence in the record to indicate that the subject Schematic Development Plan has accomplished the purposes of the MXD Zone, reflects an internally and externally compatible form of development, and is consistent with the purpose of the 2003 Master Plan Land Use Element, the Master Plan Themes, the Frederick Avenue Special Study Area, as well as generally accepted City planning and land use policies, subject to the applicant complying with the conditions stated in this Resolution.

SCHEMATIC DEVELOPMENT PLAN SDP-05-003

RESOLUTION

NOW, THEREFORE BE IT ORDAINED by the City Council of Gaithersburg, that SDP-05-003, being an application filed by Rodgers Consulting, Inc. on behalf of BP Realty Investment, Inc., requesting approval of Schematic Development Plan is hereby approved subject to the following conditions required of the applicant:

1. The project shall be phased as follows:
Phase 1 commences at approval of the final site plan and shall permit the following:

Buildings and associated infrastructure: Building S (Office/ Bank); Building A (office and residential condos above deck), Building B (restaurant), Building C (residential condo, required to be age restricted, with retail above deck including associated clubhouse, pool and tennis court), Building D (restaurant), Building E (retail), Building F (retail), Building G (retail), Building H (restaurant), Building L (restaurant), Building M (retail), Building P (Police facility and associated future parking deck), Building Q (city senior center), parking decks under future Building K and all other parking and related facilities for the above, as required. Provided that the number of available parking spaces provided never falls below the required number of parking spaces, parking

may be initially constructed as surface parking to City standards and then replaced with buildings and structured decks as shown on the SDP.

Phase 2 commences at beginning of construction of the Watkins Mill Road Interchange and shall permit the following:

Buildings: I (restaurant), J (retail), K (Office above deck); N (service station), and O (bank), and R (residential condos above deck) and parking and related infrastructure for the above, as required. Provided that the number of available parking spaces provided never falls below the required number of parking spaces, parking may be initially constructed as surface parking to City standards and then replaced with buildings and structured decks as shown on the SDP.

The property included in the Second Phase is intended to be fully developed and not held as open space (except as shown on the submitted SDP), and such development density noted above is intended to commence construction concurrent with the commencement of construction of the Watkins Mill Interchange. If the Watkins Mill Interchange project has not commenced on or before March 1, 2015, or is abandoned by the Maryland State Highway Administration (SHA), the Developer may apply to the City for an amendment to the Sketch Plan.

2. Memorandum of Understanding (MOU) between the City of Gaithersburg, Montgomery County and the applicant must be executed prior to submission of final site plan. This MOU must provide for the complete build out of Watkins Mill Road Extended from MD 355 to the proposed interchange on the east side of I-270, and complete build out of Watkins Mill Road from MD 117 to the proposed interchange on the west side of I-270;
3. Prior to submission of the final site plan, the applicant shall enter into an Agreement of Dedication requiring the Applicant to dedicate that portion of the Property as shown on the SDP for (i) the Watkins Mill Interchange, (ii) the 6-9 lanes for Watkins Mill Road Extended, (iii) the Montgomery County 6th District Police Station, and (iv) the City of Gaithersburg's Senior Center. Applicant shall then, upon request by the appropriate entity, dedicate at no cost that portion of the property for construction of (i)

the Watkins Mill Interchange to the State of Maryland or its affiliate, (ii) the 6-9 lanes for Watkins Mill Road Extended to the State of Maryland (or its affiliate), Montgomery County or the City of Gaithersburg, as they ultimately agree, (iii) the Montgomery County 6th District Police Station to Montgomery County, and (iv) the Senior Center to the City of Gaithersburg;

4. The applicant will be obligated to construct as part of the approved development two lanes of Watkins Mill Road Extended;
5. The applicant shall place all environmentally sensitive areas, as identified on the schematic development plan, under a permanent conservation easement to be recorded on a plat. The applicant and its successors and assigns shall own and be responsible for maintaining all areas within the conservation easement and shall be entitled to reimbursement from the other owners and tenants within the project under terms of the leases and other agreements;
6. The applicant shall, as part of the Agreement of Dedication, provide the following for each residential building under the City's Affordable Workforce Housing Program as part of the proposed residential component within the development: 6.25 percent MPDU's, 6.25 percent Workforce Housing, and 5 percent Workforce Housing for income-qualified City employees, public safety workers or teachers. The applicant has agreed that the work force housing units must be priced to be affordable to families and households earning 80 percent of the Washington Area Median Income, and the MPDU units must be priced to be affordable to families or household earning 60 percent of the Washington Area Median Income.
7. Applicant is to work with City and Montgomery County Transportation staff to develop, fund up to \$500,000 and implement a Transportation Demand Management Plan to mitigate the effects of the proposed development on surrounding intersections. As an alternative, the applicant, the City Manager, and Montgomery County could reach an agreement whereby the Montgomery County Department of Transportation would administer and manage the TDM Plan. The applicant must escrow \$500,000 or an equivalent bond or letter of credit with the City to fund the TDM Plan prior to applying for final site

plan approval. Applicant is to provide a preliminary plan at final site plan. A Transportation Demand Management Plan shall be operational at the time that the first certificate of occupancy is issued;

8. Applicant is to record a Declaration of Restrictions, Covenants and Easements prior to the issuance of any site development permits;
9. Applicant shall be required to construct the tennis court, pool and clubhouse generally shown on the SDP concurrently with the construction of Building C condominium;
10. Applicant shall continue to work with staff to eliminate and/or minimize the use of the several remaining retaining walls proposed throughout the site during the final site plan process;
11. Applicant shall work with City Staff on the continued refinement of pedestrian and bicycle linkages between buildings and throughout and around the site. A final pedestrian/bicycle plan shall be reviewed as part of the final site plan;
12. Applicant shall work with City staff on location of paths adjacent to and traversing sensitive areas, including a sign program for such path, bike racks, etc., extending to and from the site and through the site during the final site plan stage;
13. The applicant shall receive final approval letters from appropriate utility agencies including, but not limited to, Washington Gas, PEPCO, Verizon, and WSSC prior to the issuance of Public Works permits for each phase;
14. The final utility plan shall be approved by DPWPM&E prior to the issuance of Public Works permits for each phase;
15. Applicant shall obtain letter of agreement from SHA for access from Md. Rte. 355 and for any grading/disturbance of the revertible slope easement along Md. Rte. 355 prior to approval of final site plan;
16. Applicant must submit a preliminary/final stormwater management plan as part of the final site plan application;

17. Applicant must obtain approval of the preliminary Forest Conservation Plan prior to the submission of final site plan;
18. Applicant to work with staff on design guidelines, including a comprehensive sign package, to be adopted by the Planning Commission prior to final site plan approval;
19. Applicant must obtain approval of the environmental waiver and mitigation plan for any intrusion into the stream valley buffer, as recommended by Staff, from the Mayor and City Council during the final site plan stage;
20. Applicant must obtain road code waivers, as recommended by Staff, from the Mayor and City Council during the final site plan stage;
21. Applicant shall submit a noise analysis for current and future traffic noise impacts on the site and a noise abatement plan as part of the final site plan application. Noise abatement measures should seek to achieve the 65 dBA exterior noise guideline and the 45 dBA interior noise guideline. Prior to approval of building permits, there shall be a certification by a professional engineer with competency in acoustical analysis that the building shells will attenuate exterior noise levels to an interior level not to exceed 45 dBA Ldn. A final noise mitigation plan shall be reviewed and approved by staff prior to the issuance of building permits;
22. The developer, working with the City and a developer retained LEED certified professional shall obtain LEED certification for Building K (office) within twelve (12) months of initial occupancy. The developer shall also incorporate architecturally acceptable and commercially reasonable LEED elements, such as healthy buildings, into the design of Building C (age-restricted condominium over retail and parking deck) and encourage sustainable design;
23. Applicant to ensure that the design of all multi-story buildings with ground floor retail accommodate mechanical vent shafts through all floors for the first floor units;
24. Preliminary road profiles and grades to be submitted as part of the final site plan application;

25. Applicant to work with staff to locate new bus shelters near the Travis Avenue and Watkins Mill Road entrances to the development. The bus shelters shall be the City prototype without advertising;
26. Applicant to provide Art in Public Places Program (AIPP) and commit funding to be approved by city staff and AIPP committee during final site plan stage;
27. Applicant to redesign the Watkins Mill Road/Restaurant Row and Spectrum Avenue/N. Frederick Avenue intersections to better accommodate the primary turning movements into the development and to enhance the vistas at the intersections.
28. Amenities for Buildings A and R to be defined at final site plan; and
29. Applicant to provide screening and buffering of service roads adjoining Watkins Mill Road and North Frederick Avenue, in accordance with the Frederick Avenue Corridor Plan.

ADOPTED by the City Council this 19th day of June, 2006.

SIDNEY A. KATZ, MAYOR and
President of the Council

THIS IS TO CERTIFY that the foregoing
Resolution was adopted by the City Council
in public meeting assembled on the 19th
day of June, 2006.

David B. Humpton, City Manager